

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, Subrogee of  
PATRICIA ANN SMITH,

Plaintiff- Appellee,

v

CLARENCE GUY,

Defendant-Appellant.

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UNPUBLISHED  
February 19, 1999

No. 206382  
Muskegon Circuit Court  
LC No. 95-333472 NI

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,\* JJ.

PER CURIAM.

Defendant Clarence Guy appeals of right from the judgment entered in favor of plaintiff State Farm Automobile Insurance Company. We affirm.

Patricia Smith was injured when she was struck by an uninsured car owned by defendant and driven by Tracy Gates. Plaintiff, Smith's insurer, paid her a total of \$63,123.93 in no-fault and uninsured motorist benefits.

The case was tried without a jury. The parties stipulated that defendant owned the uninsured car, and that Gates operated the car in a negligent manner. Defendant testified that Gates came to his home to change a switch in the car. He put the keys in the ignition in order to allow Gates to gain access to the problem area, but told Gates that the car was not to be driven. Defendant acknowledged that when he gave his deposition he did not state that the keys had been removed from the car after the repair was completed. He stated that he had not been aware of this fact at the time. Keith Guy, defendant's son, and Clarence Guy, defendant's nephew, testified that after the repair was completed Keith removed the keys and placed them inside the house. Neither could testify as to how Gates obtained the keys in order to drive the car.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

In a written opinion the trial court rendered judgment against defendant in the amount of \$63,123.93, plus interest and costs. The court concluded that defendant was liable under MCL 257.401(1); MSA 9.2101(1) because his act of turning over the keys to Gates constituted implied consent for Gates to operate the car. The court discounted Keith Guy's testimony that he removed the keys on the grounds that that testimony had materialized after defendant gave his deposition. The court erroneously stated that Clarence Guy, defendant's nephew, did not testify.

In a case tried without a jury, a court must find facts and state separately its conclusions of law. MCR 2.517(A)(1). We review those findings of fact for clear error. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 171, 176; 530 NW2d 772 (1995).

MCL 257.401(1) provides in pertinent part:

The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by the common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge.

The purpose of this statute is to place the risk on the person who has the ultimate control of the motor vehicle, as well as the person in immediate control. *Poch v Anderson*, 229 Mich App 40, 52; 580 NW2d 456 (1998).

Defendant argues that the trial court clearly erred by finding that he gave implied consent to Gates to operate the car. The un rebutted evidence showed that he told Gates to not drive the car. Keith Guy testified that after the repair was completed he removed the keys from the car and placed them in the house. This testimony was corroborated by Clarence Guy.

We affirm. Although the trial court erred by finding that Clarence Guy did not testify, that error was harmless because the trial court's other findings were not clearly erroneous. The finding that Keith Guy's testimony regarding the removal of the keys was not credible in view of the chronology of its development cannot be said to be clearly erroneous. We defer to a trial court's ability to judge the credibility of witnesses who appear before it. MCR 2.613(C).

To establish liability under MCL 257.401(1), a plaintiff must show only that the defendant owned the vehicle and that it was operated with his or her express or implied consent or knowledge. Operation of a vehicle is not limited to the act of driving. Actual physical control of a vehicle equates to operation. *North v Kolomyjec*, 199 Mich App 724, 727-728; 502 NW2d 725 (1993). By leaving the keys in the ignition, defendant turned over actual physical control of the car to Gates. The trial court found no "positive, unequivocal, strong and credible evidence" that defendant did not consent to Gates driving his car, *Bieszck v Avis Rent-A-Car System, Inc*, 459 Mich 9, 18-19; 583 NW2d 691 (1998), and the trial court's finding was not clearly erroneous. Imposition of liability under MCL 257.401(1) was proper.

Affirmed.

/s/ Roman S. Gibbs

/s/ Henry William Saad

/s/ Paul H. Chamberlain